THE PASSING OF POLYGAMY.

BY REED SMOOT, UNITED STATES SENATOR FROM UTAH.

IT is well to be fair in referring to Utah as to other localities. That some differ with me in this attitude, I am convinced from the persistent calumny and misrepresentation which they put forth. But, just the same, I maintain that it is well to be fair—indeed, it is the better course—with Utah as with other States.

Under pressure from within as well as from without, the Mormon Church, in the year 1890, adopted a Church manifesto requiring a cessation of polygamy, or the marrying of plural wives, which it had been practising in this nation against the national sentiment. In 1896, Utah was admitted to Statehood, one condition being that polygamous or plural marriages should be forever prohibited. This condition was complied with in the State Constitution, which applies a penalty of five years' imprisonment and five hundred dollars' fine for each case of polygamy.

In the recent investigation by the United States Senate, in what is known as the Reed Smoot case, it was proved conclusively that since the manifesto of 1890 there had not been celebrated in Utah—or elsewhere throughout the United States, for that matter—a solitary polygamous marriage by or with the consent, connivance, countenance, sanction or approval of the Mormon Church. In view of the fact that permission to engage in the system of plurality of wives, just as leading characters named in the Bible had done, had been taught affirmatively by the Mormon Church for nearly half a century; that many of the Church members had entered into that relation; and that thousands of children had been born and reared in polygamous families,—this strict adherence to the requirements of the manifesto is conclusive evidence of the sincerity of the Mormon Church with reference to its further practice of polygamy in opposition to the national

sentiment. The Senate inquiry established clearly that polygamous marriages in Utah became a thing of the past more than sixteen years ago, and that no polygamous relations assumed since 1890 have received the sanction of the Church. A certain class of preachers and politicians seem to regret the fact, as it removes a notable excuse for assailing the Mormon Church; but it is a fact, nevertheless, established beyond successful dispute.

Another condition of Utah's admission to Statehood was that there should be no union of Church and State, and that no Church should dominate the State or interfere with its functions. Prior to the manifesto stopping polygamy, there were in Utah two political activities—the People's Party and the Liberal Party. The former was composed almost wholly of Mormons, and the latter of non-Mormons. The party issues virtually were along Church lines, and at least gave the appearance of Church questions dominating the State. In 1891, however, these lines were abandoned, and the national political parties permanently occupied the field, the party divisions being on the national party issues. Mormons as well as other people took sides with one or other of the parties, and officials were elected without respect to religious affiliations.

The evidence in the recent Senate investigation shows, beyond the peradventure of a doubt, that Mormon citizens are as persistent in upholding their political party tickets as are non-Mormons; that they do this without dictation from or interference by the Church; and that, so far as the Mormon Church is concerned, there is in Utah no union with the State nor domination thereof by the Church. The State Constitution contained the required provision on the subject, and it has been observed strictly. Thus the State of Utah, and the people thereof, have kept faith with the National Government in respect to Statehood, and will continue to keep it.

The matter of polygamous cohabitation is quite distinct from that of polygamy. The latter is the forming of new polygamous relations, and the formation of these having stopped by the cessation of plural marriages by the Mormon Church, it is merely a question of time when those previously formed will disappear in the death of the parties. At the time of the Church manifesto of 1890 stopping plural marriages, those already in the polygamous relation found themselves in a new position of difficulty.

They were good people, against whom no charge could be brought except that, under the idea of religious right, they had entered into the polygamous relation. There was a feeling that these people were entitled to humane consideration; human nature, the ties of kindred and intense religious convictions had to be reckoned with, so the people of Utah did what they believed best under the circumstances.

Prior to 1890, Congress had been most rigid in its attitude against the contracting of polygamous or plural marriages, and also toward the sustaining of those relationships by polygamous families. The Edmunds law of 1882 directed a blow specifically at the latter, which was defined as unlawful cohabitation, and made punishable by fine and imprisonment. Under this law the Government multiplied prosecutions, and there were many convictions. In 1887, the Edmunds-Tucker law added to the stringency of regulations up to 1890, when the Woodruff manifesto was issued. Later, there was no relaxation of the severity so far as it affected the contracting of plural marriages; but the Enabling Act of July 16th, 1894, omitted all mention of unlawful cohabitation, while it required as a condition for Utah's admission to the Union "that polygamous or plural marriages are forever prohibited."

In view of the attitude on old polygamous relationships, as exhibited in the acts of 1882 and 1887, and the toleration shown by the Government prosecuting officers toward these old cases in Utah, this omission by Congress of "unlawful cohabitation" from the Act of 1894 affords a contrast that is susceptible of one construction only.

This same toleration was recognized in the formation of the Utah State Constitution, when Mr. Varian, a non-Mormon who, as United States District Attorney, had been among the most determined prosecutors in enforcing anti-polygamy laws, presented in the Convention the clause which gave effect in the State Constitution to the prohibition therein of polygamous marriages, under heavy penalties, Mr. Varian stating that "it did not touch cohabitation." Such a statement was acceptable only under the tolerant sentiment which had prevailed since 1891. It was assented to when the State Constitution was adopted in 1895 by an overwhelming vote composed largely of non-Mormon citizens.

The condition in Utah, its treatment, and the finding thereon as connected with the Reed Smoot case, are thus briefly and explicitly set forth in the report submitted to the Senate by Senators Foraker, Beveridge, Dillingham, Hopkins and Knox, and endorsed by the affirmative vote of seven out of the thirteen members of the Committee on Privileges and Elections which heard the testimony, and by almost two-thirds of the United States Senate, at the final disposition of the case, on February 20th, 1907; this report says:

"The evidence shows that there were at this time (1890) about 2,400 polygamous families in the Territory of Utah. This number was reduced to five hundred and some odd families in 1905. A few of these families may have moved out of the State of Utah; but, so far as the testimony discloses, the great reduction in number has been on account of the death of the heads of those families. It will be only a few years at most until all will have passed away. This feature of the situation has had a controlling influence upon public sentiment in the State of Utah with respect to the prosecutions for polygamous cohabitation since the manifesto of 1890.

"Whether right or wrong, when plural marriages were stopped and the offence of polygamy was confined to the cohabitation of those who had contracted marriages before 1890, and particularly those who had contracted marriages before the statutes of 1887 and 1882, the disinclination to prosecute for those offences became so strong, even among the non-Mormons, that such prosecutions were, finally, practically abandoned.

"It was not alone the fact that if no further plural marriages were to be contracted polygamy would necessarily in the course of time die out and pass away, but also the fact that Congress having, by the statutes of 1882 and 1887, specifically legitimized the children of those polygamous marriages, it was inconsistent, if not unwise and impossible, in the opinion of even the non-Mormons, to prohibit the father of such children from living with, supporting, educating and caring for them; but if the father was thus to continue to live with, support, educate and care for the children, it seemed harsh and unreasonable to exclude from his relationship the mothers of the children. . . .

"In other words, the conditions existing in Utah since Reed Smoot became an official of the Mormon Church in 1900 have been such that non-Mormons and Mormons alike have acquiesced in polygamous cohabitation on the part of those who married before the manifesto of 1890, as an evil that could best be gotten rid of by simply tolerating it until in the natural course of events it shall have passed out of existence.

"With this disposition prevailing everywhere in the State of Utah among all classes—the Gentile or non-Mormon population as well as among the Mormons—the undersigned are of the opinion that there is no just ground for expelling Senator Smoot or for finding him disquali-

fied to hold the seat he occupies because of the fact that he, in common with all the people of his State, has not made war upon, but has acquiesced in, a condition for which he had no original responsibility. In doing so, he has only conformed to what non-Mormons, hostile to his Church, as well as Mormons, have concluded is, under all the circumstances, not only the wisest course to pursue, but probably the only course that promises effective and satisfactory results."

It may be suggested here that to place the number of polygamous families in the Mormon Church to-day at 400 would be a very liberal estimate; this gives as polygamists about one-tenth of one per cent. of that Church's population—a proportion which is decreasing rapidly. Back in 1904 a census was taken of polygamists in Salt Lake City, showing 74—or less than one to each one thousand of population—and all but two of these were over fifty years of age.

I observe that in a recent issue of "The Independent," Senator Burrows advocates a constitutional amendment to the effect that neither polygamy nor polygamous cohabitation shall exist within the United States. He bases his advocacy thereof upon assertions such as these:

(1) That, since the manifesto of the Mormon Church stopping polygamy, five of the Apostles, A. H. Cannon, George Teasdale, M. W. Merrill, J. W. Taylor and M. F. Cowley have taken plural wives;

(2) That "fully 12,000 members of the Utah branch of the Mormon Church, or 23 per cent. of the whole number, are living in polygamy"; and,

(3) That the records of the Attorney-General's office show that in 1905 there were in Arizona sixteen convictions under the Edmunds law, twelve of this number being for unlawful cohabitation; and that of thirty-one convictions in New Mexico and Arizona a majority were for polygamous cohabitation.

These statements may be measured by the facts which came out during the recent Senatorial inquiry and discussion in Congress. These are as follows:

1. The rumor regarding A. H. Cannon did not become current for some time after his death, which occurred in 1896; the charge against George Teasdale and M. W. Merrill was shown to be untrue; and J. W. Taylor and M. F. Cowley are not members of the Apostles' quorum, having been dropped from it and others sustained in their places at a general conference of the Church;

2. Instead of fully 12,000 members, or 23 per cent. of the whole number, of the Mormon Church living in polygamy, the evidence established that in the year 1903 there were 647 polygamist families in the United States, and in 1905 it was estimated that there were about 500, and to-day I am positive there are not over 400 such families;

3. That the Attorney-General, directly correcting Senator Burrows on a former occasion,* officially stated that in the year 1905 there were but ten Mormons convicted in Arizona of polygamous cohabitation, all of them being cases of plural marriages which had occurred previous to 1887, and that not one of the convictions in New Mexico was of a Mormon, or a Mormon polygamous marriage. The truth is that there are only four men, members of the Mormon Church, in the whole of the Territory of New Mexico who are polygamists.†

It would seem highly improbable that the great American nation is eager to amend its Constitution upon the basis of such a misrepresentation of conditions.

The matter of a constitutional amendment in this nation is something more than the subject of a whim; it is a question of grave importance. So far as one specifically affecting polygamy is concerned, the State of Utah can stand it as readily as can other States; but can the other States afford to adopt such a provision merely to point the finger of scorn at a sister commonwealth because of past conditions, when present conditions or future prospects do not require it? A constitutional amendment directed at a practice abandoned seventeen years ago, through which three or four hundred men, now nearing the end of life's journey, are left in the heritage of the polygamous relationship, does not appear extremely consistent.

On a broader plane, however, there may be a call for a constitutional amendment. If so, it should be anything and everything but the self-emasculated proposition put forth by Senator Burrows. If we have an amendment to the National Constitution, let it be on a living question, so as to be of worth to the nation. Come out of the cemetery of the past into the life of the present. In following the President's suggestion, let us go

* See "Congressional Record," Fifty-ninth Congress, First Session, pp. 8649–50.

† See "Congressional Record," Fifty-ninth Congress, First Session, p. 8650.

the full length, and take in the whole subject of the marital relation. If Congress can be trusted with anything on that subject, it can be trusted with all of it, and an amendment something like the following be considered:

"Congress shall have exclusive jurisdiction over marriage and divorce, and all matters relating thereto."

That would include polygamy, polygamous cohabitation, adultery and kindred offences against the law and national sentiment, and could provide a uniform rule of conduct for all that marry. If there be another amendment to the National Constitution, let it be placed on a manly, straightforward, honest, broad foundation; not based on misrepresentation or intolerance. Let us be fair; then we are reasonably certain of being right.

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